



NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE BUILDING

RALEIGH 27601

February 16, 2018

Ms. Kristi Jones
Chief of Staff
Office of the Honorable Roy A. Cooper
Governor of North Carolina
20301 Mail Service Center
Raleigh, N.C. 27699

Dear Ms. Jones:

Thank you for your partial response to our February 12 letter to Gov. Roy Cooper's lobbyist, Lee Lilley, regarding the roughly \$58 million Gov. Cooper obtained from energy companies within hours prior to his administration's issuance of a major permit to advance the Atlantic Coast Pipeline. Unfortunately, an incomplete response does not satisfy the concerns of North Carolinians who are troubled by the appearance of potential pay-to-play or pay-for-permit this Memorandum of Understanding created. For this reason, we are resubmitting our list of questions to you, and have taken the liberty to fill in the partial responses from your previous letter. These are not difficult or complex questions, so hopefully, the third time will be the charm.

1. Please explain how the governor's office came to negotiate and obtain \$57.8 million from the energy companies seeking to build the Atlantic Coast Pipeline?

In the Governor's office, discussions about the fund began in 2017, when eastern North Carolina economic developers and others expressed concerns about whether the pipeline would bring the economic growth it promised.

2. Who specifically in the governor's office and his administration was involved in negotiating the deal?

The Governor's Office, including Legal Counsel William McKinney and Senior Advisor Ken Eudy, worked with the ACP partners to establish the fund to lessen the impact and create jobs in the counties affected by the project.

Did Gov. Cooper personally bless the arrangement?

3. When and how did negotiations over what many are referring to as the governor's personal "slush fund" start?

In the Governor's office, discussions about the fund began in 2017, when eastern North Carolina economic developers and others expressed concerns about whether the pipeline would bring the economic growth it promised.

Were the negotiated offers made in writing or in person? Are there other drafts you can share? [Were they submitted via email or hand delivery? Please share the times and list of participants in each negotiating session and all other drafts of the proposal with us.]

4. Were other matters beyond the pipeline addressed during negotiations? If so, what matters?
5. How did the governor envision the extra-governmental fund working?

As the MOU stated, an executive order would establish the fund and lay out the structure, process and rules for administering the fund...

The MOU, signed by a representative of the ACP and Mr. McKinney, was the first step in the fund's existence. The MOU identified the purposes for which the funding should be directed and the commitment to these purposes by both parties. As the MOU spells out, an Executive Order would be issued to direct the establishment of the fund and how it would operate.

... the Governor's office was working to finalize the process that would be utilized to effectuate the MOU. Our expectations and plans have been that decisions about the distribution of the fund were to be made after a review of applications from qualified government entities and non-profits.

The Rural Infrastructure Authority and the Clean Water Management Trust Fund are examples of two grantmakers operating under these guidelines that could fulfill the administrative process and accomplish the goals. The executive order setting up the fund would direct that it operate subject to the state's Public Records and Open Meetings laws, the State Ethics Act and additional provisions preventing conflict of interest or duplication of efforts.

We anticipated the designation of subject matter experts who would serve as trustees or directors. Never was the Governor contemplated to be the decision maker as to which projects would be funded.

6. How did the governor plan to spend the money?

...the ACP agreed to provide funds to support economic development and additional environmental protection in the eight counties where the pipeline is being constructed. Specifically, these funds were intended to provide a public benefit by expanding access to the pipeline while mitigating the adverse environmental effects created by the pipeline...

Separately, the mitigation fund would provide additional resources to help offset the impact of the pipeline as well as to provide investments in renewable energy and economic development in the counties along the pipeline. Extending gas lines is an expensive process and the fund could help offset some of it.

Is he aware that state and federal law already require utilities building the Atlantic Coast Pipeline to meet environmental mitigation requirements before the project can receive approval? [Is he aware of recent reports from WBTV indicating the pipeline companies made additional payments totaling \$11 million for mitigation purposes?]

7. Can you clarify your response to this question as it appears to conflict with reports in the *News & Observer*: Will the ratepayers and consumers or shareholders pay for this \$58 million extra-governmental fund?

[The February 1, 2018 News & Observer report that rate-paying customers would be asked to foot the bill for the fund also appears to contradict Mr. Lilley's committee testimony that the pipeline's shareholders would pay for the fund.]

As to whether shareholders or ratepayers would cover the cost of the fund, that is a decision for the utilities developing the pipeline.

8. Why does the governor's office call this a "voluntary contribution" when Democratic Rep. Pricey Harrison said it was "a condition of getting the permit granted" and the governor's own spokesman has called the arrangement "negotiations," which by definition are not voluntary?
9. Would the private parties involved in the negotiations agree with the governor's assertion that this was a "voluntary contribution" completely unrelated to the permitting process?
10. Does the governor's office think this type of activity – requesting large contributions from private businesses wanting to do business in our state – encourages economic development in North Carolina?
11. What other companies has the governor obtained "voluntary" \$50 million plus contributions to the state from? Is he currently or has he in the past solicited a similar contributions from other businesses or individuals? Were these companies also seeking environmental permits?

No similar discussions regarding other construction projects have occurred in North Carolina, nor has a project of this scope been proposed.

12. Do you think the solicitation and acceptance of this money by the governor erodes the public's trust in the permit approval process?
13. Why does the governor's office compare this agreement to actions taken in Virginia when the Virginia agreement was signed by the Commonwealth's chief environmental regulator and went to specifically designated mitigation projects, while Gov. Cooper's deal gives him unfettered control of an extra-governmental fund outside of the normal appropriations process allowed by the North Carolina constitution?
14. Is this arrangement an illegal and unconstitutional violation of the separation of powers or a violation of due process?
15. Does this arrangement run afoul of state ethics law that prohibits elected officials from using their office and title to solicit funds for personal benefit?

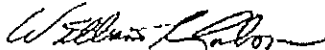
In addition, your partial responses have raised some follow-up questions. Would you please also respond to these questions?

1. You stated that *discussions* about the fund "began in 2017." When in 2017? And when, specifically, did the actual *negotiations* take place? Did Gov. Cooper personally participate in and/or sign off on the negotiations?

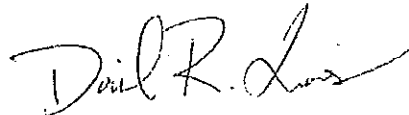
2. Your statement, "never was the Governor contemplated to be the decision maker as to which projects were funded," directly contradicts the last whereas clause of the MOU, which states "the Governor, through his agents and assigns... has the authority to direct the disbursement of funds contemplated in the MOU." Please explain this inconsistency.
3. You stated the governor's deal with the Atlantic Coast Pipeline's builders may now be in peril. Have you heard this from the pipeline builders, or are you implying the governor will no longer accept the funds if they are used to help poor, rural Eastern North Carolina schools?
4. Why doesn't the governor believe investing \$58 million in our children's public education in the eight poor, rural Eastern North Carolina counties impacted by the pipeline will help economic development and job creation in that region?
5. Did anyone in the executive branch or governor's office, or with direct ties to the governor directly or indirectly ask Rep. Pricey Harrison to retract her statement that the fund was "a condition of getting the permit granted?"
6. You mentioned "the Rural Infrastructure Authority and the Clean Water Management Trust Fund are examples of two grantmakers operating under these guidelines that could fulfill the administrative process and accomplish the goals." Aren't these entities the subject of a lawsuit filed by Gov. Cooper claiming they are unconstitutionally constituted because he lacks sufficient dominance of the board appointments to exercise real control over the boards' actions? Why would he support these funds being administered by two entities he is challenging in court? And why does he claim these boards are independent at the same time he is seeking complete control of them from the Democratic-controlled Supreme Court?
7. Your response, "as to whether shareholders or ratepayers would cover the cost of the fund, that is a decision for the utilities developing the pipeline," contradicts the *News & Observer* report that "Duke and other utilities will seek to recover the full cost of the pipeline – which includes construction, permitting and environmental compliance – from their customers through their utility bills." Why did Gov. Cooper fail to negotiate a requirement that these payments come out of corporate profits, rather than from rate-paying customers?

For the sake of clarity, and to avoid having to go through this exercise yet again, please send complete responses to these questions in the format they have been resubmitted to you by 1:00 p.m. on Monday, February 19.

Respectfully,



Sen. Bill Rabon
Senate Rules Chairman
Member, Senate Appropriations/Base Budget
Committee



Rep. David Lewis
House Rules Chairman
Member, House Appropriations/Base Budget
Committee